

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

WEST VIRGINIA HOSPITALITY AND	)	
TRAVEL ASSOCIATION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
AMERICAN WATER WORKS	)	Case No. 2:16-cv-00184
COMPANY, INC.; AMERICAN WATER	)	
WORKS SERVICE COMPANY, INC.;	)	
WEST VIRGINIA-AMERICAN WATER	)	
COMPANY; EASTMAN CHEMICAL	)	
COMPANY; GARY SOUTHERN; and	)	
DENNIS P. FARRELL,	)	
	)	
Defendants	)	

**PLAINTIFF’S MOTION FOR A STATUS CONFERENCE AND RENEWED MOTION  
FOR ENTRY OF A SCHEDULING ORDER**

Plaintiff, the West Virginia Hospitality and Travel Association, Inc., moves the Court for a Status Conference and renews its Motion for Entry of a Scheduling Order previously filed on March 8, 2017 upon the following grounds.

1. On January 8, 2016, Plaintiff West Virginia Hospitality and Travel Association, Inc. (hereinafter: “WVHTA”), filed its Complaint for Recovery of CERCLA Response Costs, Judicial Abatement of a Public Nuisance, Damages from Private Nuisance, Negligence, Negligence Per Se, Gross Negligence, Breach of Contract and Breach of Warranty.
2. All Defendants filed answers and the parties submitted a Rule 26(f) Report of Planning Meeting to the Court on March 25, 2016.
3. On April 1, 2016, this Court held a scheduling conference herein.
4. To date, no Scheduling Order has been entered by the Court.

5. Local Rule of Civil Procedure 16.1 (e) provides as follows:

Scheduling Orders.

Following the scheduling conference, if one is held, or as soon as practicable after the date fixed for filing the written report if the scheduling conference is cancelled, but in any event within 90 days after the appearance of a defendant and within 120 days after the complaint has been served on a defendant, the judicial officer shall enter a scheduling order pursuant to FR Civ P 16(b).

6. Through numerous status conferences in this action and in the simultaneously pending *Good* Class Action, Case No.: 2:14-CV-01374 (S.D. WV) (Copenhaver, Jr., J.) involving claims by different plaintiffs against the defendants arising out of the same operative facts as this action, this Court has encouraged the parties to discuss resolution which the parties have done.
7. Plaintiff WVHTA has expended very considerable time and effort in multiple efforts to settle its claims and is unable to resolve this case at this time.
8. In an effort to facilitate resolution of this matter, on August 16, 2016 Plaintiff filed its Motion for Partial Summary Judgment on CERCLA liability against Defendants Southern and Farrell. All briefing on that motion was completed on September 29, 2016.
9. In an effort to protect its ability to reach available assets of Defendant Southern, a non-resident of this State and this U.S. Judicial District and non-citizen of the United States, Plaintiff filed its Motion for Pre-Judgment Attachment of Certain Real Property owned by Defendant Southern on November 11, 2016. All briefing on that motion was completed on December 13, 2016.
10. At a Status Conference held in Chambers before the Court on Thursday, January 12, 2017, after confirming with the parties the current stalemate between them on settlement

progress, the Court indicated its awareness that there never has been a Scheduling Order issued, and that action by Court on the fully briefed, pending motions would likely contribute towards further progress on settlement between Plaintiff and at least some the Defendants.

11. To date, this Court has not scheduled any hearings on any of the fully-briefed motions and has not issued any rulings on any of those fully-briefed, pending motions, and has not issued a Scheduling Order.
12. The lack of a timely Scheduling Order is clearly detrimental to the Plaintiff since Plaintiff is unable to prosecute its case and engage in discovery, take depositions and prepare its case for trial.
13. This Court in the *Good* Class Action, Case No.: 2:14-CV-01374 (S.D. WV) preliminarily approved the *Good* Class Settlement which included this case in the Settlement Class.
14. This Court established an opt out date of December 8, 2017 for any member of the *Good* Class Action who wished to opt out of the *Good* Class Settlement.
15. Plaintiff WVHTA submitted its opt out postmarked December 8, 2017 from the *Good* Class Settlement.

Accordingly, Plaintiff WVHTA respectfully moves the Court for a Status Conference and to forthwith enter a Scheduling Order in this matter that will allow Plaintiff WVHTA to prosecute its claims before this Court.

Respectfully submitted:

**NEELY & CALLAGHAN**

BY: /s/Michael O. Callaghan  
Michael O. Callaghan

WV Bar No: 5509  
Lead Trial Counsel for Plaintiff, West Virginia  
Hospitality and Travel Association, Inc.  
159 Summers Street  
Charleston, WV 25301-2134  
Telephone: (304) 343-6500  
Facsimile: (304) 343-6528  
E-Mail: [mcallaghan@neelycallaghan.com](mailto:mcallaghan@neelycallaghan.com)

Date: December 19, 2017

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

WEST VIRGINIA HOSPITALITY AND	)	
TRAVEL ASSOCIATION, INC., a West	)	
Virginia Not-for-Profit Corporation, on	)	
behalf of All of Its Adversely Affected	)	
Members, and as Assignee of Certain of Its	)	
Adversely Affected Members	)	
	)	
Plaintiff,	)	Case No. 2:16-cv-00184
	)	
v.	)	
	)	
AMERICAN WATER WORKS	)	
COMPANY, INC., a Delaware Corporation;	)	
AMERICAN WATER WORKS SERVICE	)	
COMPANY, INC., a New Jersey	)	
Corporation; WEST VIRGINIA-	)	
AMERICAN WATER COMPANY, a West	)	
Virginia Corporation; EASTMAN	)	
CHEMICAL COMPANY, a Delaware	)	
Corporation; GARY SOUTHERN, an	)	
individual; and DENNIS P. FARRELL, an	)	
individual,	)	
	)	
Defendants	)	

**CERTIFICATE OF SERVICE**

I, Michael O. Callaghan, counsel for Plaintiff, hereby certifies that on this 19th day of December, 2017, the foregoing Motion for Status Conference and Renewed Motion for Entry of a Scheduling Order was electronically filed with the Clerk of the Court using the CM/ECF system and via United States Mail to the following counsel of record:

Marc E. Williams, Esq.  
Robert L. Massie, Esq.  
Melissa Foster Bird, Esq.  
NELSON MULLINS RILEY &  
SCARBOROUGH LLP  
949 Third Avenue, Suite 200  
Huntington, WV 25701  
*Counsel for Eastman Chemical Company*

Robert B. Allen, Esq.  
Pamela C. Deem, Esq.  
KATY CASTO & CHANEY PLLC  
P.O. Box 2031  
Charleston, WV 25327  
*Counsel for Gary Southern*

Michael W. Carey, Esq.  
S. Benjamin Bryant, Esq.  
CAREY, SCOTT, DOUGLAS & KESSLER, PLLC  
P.O. Box 913  
Charleston, WV 25323  
*Counsel for Dennis P. Farrell*

Thomas J. Hurney, Jr., Esq. AND  
Brian R. Swiger, Esq.  
Al F. Sebok, Esq.  
L. Jill McIntyre, Esq.  
Laurie K. Miller, Esq.  
JACKSON KELLY PLLC  
P.O. Box 553  
Charleston, WV 25322  
*Counsel for West Virginia American Water Company, American Water Works Company, Inc. and American Water Works Service Company, Inc.*

Kent Mayo, Esq.  
Steven Leifer, Esq.  
BAKER BOTTS L.L.P.  
1299 Pennsylvania Avenue, NW  
Washington, DC 20004

BY: /s/Michael O. Callaghan  
Michael O. Callaghan WV Bar No. 5509  
NEELY & CALLAGHAN  
159 Summers Street  
Charleston, WV 25301-2134  
Telephone: (304) 343-6500  
Facsimile: (304) 343-6528  
E-Mail: mcallaghan@neelycallaghan.com